



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

January 11, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 1769

Mr. Ken Pope
Sid Richardson Carbon and Energy Company
P.O. Box 470
Big Spring, Texas 79720

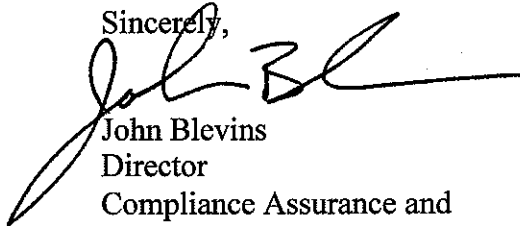
Subject: Notice and Finding of Violation - Sid Richardson Carbon and Energy Company,
Big Spring, Howard County, Texas

Dear Mr. Pope:

Enclosed is a Notice and Finding of Violation (Notice) pursuant to Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). This Notice is issued to Sid Richardson Carbon and Energy Company for violations of the Prevention of Significant Deterioration and Title V requirements under the CAA and the Texas State Implementation Plan at its Big Spring, Texas, facility. In accordance with Confidential Business Information (CBI) regulations, we have not included any CBI in the Notice.

Please note the opportunity to confer outlined in the Notice. Any request to confer should be directed to Lorraine Dixon, Assistant Regional Counsel. Ms. Dixon can be reached at (214) 665-7589.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: William R. Jones, President
Sid Richardson Carbon and Energy Company

Long B. Nguyen, P.E.
Corporate EH&S
Sid Richardson Carbon and Energy Company

Robert T. Stewart, Esq.
Kelly Hart & Hallman

Re: Sid Richardson Carbon and Energy Company
Notice and Finding of Violation

cc: Michael De La Cruz
Air Enforcement Section Manager
Texas Commission on Environmental Quality

Kellie Ortega, Esq.
Air Enforcement Branch
U.S. Environmental Protection Agency, HQ

IN THE MATTER OF:

NOTICE OF VIOLATION

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such “criteria” pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate

national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), and particulate matter less than 10 micrometers (PM₁₀) as criteria pollutants, and has promulgated NAAQS for such pollutants.
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to such pollutant. An area that cannot be classified as either "attainment" or "nonattainment" with respect to a particular pollutant due to insufficient data is termed "unclassifiable" with respect to such pollutant.
5. At all times relevant to this NOV, Howard County, Texas, in which the Facility is located, has been classified as either attainment or unclassifiable for all criteria pollutants.

Prevention of Significant Deterioration

6. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.
7. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable for the applicable National Ambient Air Quality Standards (NAAQS), without first obtaining a PSD permit and installing Best Available Control Technology (BACT).
8. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates carbon black plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."
9. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" to include "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

10. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
11. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved by EPA as part of its SIP. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).
12. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21 and requirements for SIP approved programs at 40 C.F.R. § 52.166. *See* 43 Fed. Reg. 26,403 (June 19, 1978). Since that time, the PSD regulations have been revised, with subsequent revisions incorporated under 40 C.F.R. § 52.21.
13. On May 31, 1972, EPA approved the Texas Air Pollution Control Implementation Plan, which was later redesignated the State Implementation Plan for Texas (hereinafter referred to generally as the "Texas SIP"). *See* 37 Fed. Reg. 10,895; 40 C.F.R. § 52.2299.
14. On June 24, 1992, EPA approved the Texas PSD program, which was effective on July 24, 1992. *See* 57 Fed. Reg. 28,093 (June 24, 1992); 40 C.F.R. §§ 52.2299 (c) and 52.2303. Effective October 20, 1997, Texas PSD regulations were recodified under Title 30, Section 116.160, of the Texas Administrative Code. *See* 30 TAC § 116.111; 62 Fed. Reg. 44,085 (Aug. 19, 1997).
15. Pursuant to the rules approved by EPA for the Texas SIP and effective October 20, 1997, the Texas PSD program incorporated by reference the federal PSD rules at 40 C.F.R. § 52.21 (as amended June 3, 1993 and effective June 3, 1994) and required "each proposed major modification in an attainment or unclassifiable area" to comply with the federal regulations. *See* 30 TAC § 160.111; *see also*, 40 C.F.R. § 52.21.
16. In addition, the Texas PSD program requires "before any actual work is begun on the facility, any person who plans to engage in the modification of any existing facility which may emit air contaminants into the air of Texas must obtain a permit to construct pursuant to TAC § 116.111."
17. Under the PSD regulations, "major stationary source" is defined to include carbon black facilities which emit or have the potential to emit 100 tons per year or more of any air pollutant subject to regulation. 40 C.F.R. § 52.21(b)(1)(i)(a); *See also*, 30 TAC § 116.12.

18. Under the PSD regulations, "major modification" is defined as "any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this Section) of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source." 40 C.F.R. § 52.21(b)(2)(i); *See also*, 30 TAC § 116.12.
19. "Significant" is defined in relevant part to mean, "in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, at a rate of emissions that would equal or exceed any of the following rates:"

Pollutant	Rate (tons per year)
Nitrogen oxides (NO _x)	40
Sulfur dioxide (SO ₂)	40
Carbon monoxide (CO)	100
Volatile organic compounds (VOC)	40
Hydrogen sulfide (H ₂ S)	10
Total reduced sulfur (TRS) (including H ₂ S)	10
Particulate Matter – 10	15

40 C.F.R. § 52.21(b)(23)(i); *see also*, 30 TAC § 116.160.

20. Under the PSD regulations, "net emissions increase" means the amount by which the sum of the following exceeds zero: "any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source" and "any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i); *See also*, 30 TAC § 116.12.
21. The PSD regulations define "actual emissions" as the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. 30 TAC § 116.112. In addition, for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. 30 TAC § 116.12.
22. "Stationary source" is defined to mean "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation." 40 C.F.R. § 52.21(b)(5); *See also*, 30 TAC § 116.12.
23. "Building, Structure, Facility or Installation" are defined to mean "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)." 40 C.F.R. § 52.21(b)(6); *See also* 30 TAC § 116.12.

24. "Commence" [a]s applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has: (A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or (B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time. 40 C.F.R. § 52.21(b)(8); *See also*, 30 TAC § 116.12.
25. "Construction" is defined to mean "any physical change or change in the method or operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8); *See also*, 30 TAC § 116.12.
26. "Begin actual construction" is defined, in relevant part, to mean, "in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures." 40 C.F.R. § 52.21(b)(11); *See also*, 30 TAC § 116.12.
27. If a source is a major stationary source in an attainment or unclassifiable area planning to construct a major modification under the foregoing definitions, then it is subject to the requirements contained in 30 TAC § 116.160.
28. A major stationary source subject to the requirements of 30 TAC § 116.160 must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, apply BACT, and allow for meaningful public participation in the process. *See* 30 TAC § 116.160.

Federal Title V Requirements

29. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See* 61 Fed. Reg. 34228; 40 C.F.R. Part 71.
30. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.

31. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.
32. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also*, 30 TAC § 122.120(a), and 30 TAC § 122.121
33. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in Part 52 of this chapter." *See also*, 30 TAC § 122.10(2)
34. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also*, 30 TAC § 122.121.
35. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also*, 30 TAC §§ 122.130(b)(2), 122.132(a) and (b), 122.133, and 122.134.
36. 40 C.F.R. § 70.5(b) provides that "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also*, 30 TAC §§ 122.132, 122.136 and 122.142.

Texas Title V Requirements

37. EPA granted full approval of the Texas Title V program on November 30, 2001. 40 C.F.R. Part 70, Appendix A. Texas' Title V program became effective on that date. *See* 61 Fed. Reg. 39597.
38. The Texas regulations governing the Title V permitting program are codified at Title 30 of the Texas Administrative Code, and are federally enforceable pursuant to Section 113(a)(3). The Texas regulations provide that no major source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. *See* 30 TAC § 122."

B. FACTUAL BACKGROUND

39. SRCC owns and operates a carbon black manufacturing facility in Big Spring, Texas (Facility).
40. SRCC is a privately owned company. SRCC is hereinafter referred to as "Respondent."
41. Respondent is a "person" within the meaning of Sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
42. At the Facility, Respondent operates three carbon black units (Units 1-3). Respondent partially combusts and thermally decomposes a heavy oil feed in a low oxygen reactor under controlled conditions, thus producing solid carbon particles which are recovered as the carbon black product. The carbon black is then dried, pelletized, and packaged.
43. The Facility meets the definition of a "major stationary source" in 40 C.F.R. § 52.21(b)(1)(i)(a) because it is a carbon black plant that has the potential to emit in excess of 100 tons per year of the following regulated pollutants: of NO_x, SO₂, CO, PM₁₀, VOC, H₂S, and TRS.
44. Big Spring, Howard County, Texas is designated as either attainment or unclassifiable for all criteria pollutants. *See* 40 C.F.R. § 81.344.
45. The Facility currently operates under a Title V Permit (Permit Number O-01550) that was issued by the Texas Commission on Environmental Quality on March 31, 2003; modified on December 5, 2005, April 24, 2006, and January 29, 2007; and renewed on March 24, 2008 and a PSD Permit (Permit Number: 1867A/PSD-TX-1032 issued on March 29, 2004; modified on January 1, 2006; February 8, 2008; and January 9, 2009).
46. By information request letters issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated August 19, 2010, to the Facility, EPA required Respondent to submit specific information regarding its carbon black manufacturing facility located within Big Spring, Texas.
47. Respondent replied to EPA's Section 114 information requests to the Facility with a submittal on January 24, 2011.

C. VIOLATIONS

48. Upon review of the information provided by Respondent, referenced above in Paragraph 47, EPA Region 6 has concluded that Respondent conducted capital

projects on carbon black units at the Facility which increased the Facility's capacity.

49. Furthermore, the projects referenced below in Paragraphs 50 through 79 also meet the definition of "major modification" provided under both 40 C.F.R. § 52.21(b)(2)(i) and 30 TAC § 116.12(18), because they represent a physical change in, or a change in the method of operation of, a major stationary source that resulted in a significant emissions increases of a regulated NSR pollutant(s) (specifically NO_x, SO₂, CO, VOC, TRS, H₂S, and PM), and significant net emissions increases of those pollutants from a major stationary source.

(1) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit 1 in or about September 1997 (SO₂ and CO Emissions Increases)

50. In or about September 1997, Respondent made a major modification to Unit 1, by installing motors on primary bag filter exhaust fans. The modification resulted in increased capacity of the unit.
51. This modification triggered "significant" net emissions increases in SO₂ and CO emissions as defined in 40 C.F.R. § 52.21(b)(23), and 30 TAC § 116.3(a)(12), and is therefore considered a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(i).
52. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 1 at the Facility in September 1997, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r) and 40 C.F.R. § 52.21(i)(1), and 30 TAC § 116.1(a).
53. In failing to apply BACT to the major modification made to Unit 1 at the Facility in 1997, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for a major modification, specifically those provided under 40 C.F.R. § 52.21(j)(3), and 30 TAC 116.3(a)(3).
54. In reinitiating, and continuing to operate, the Facility in September 1997, without obtaining or applying for the required permit to operate following completion of the major modification to Unit 1, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(2) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit 3 in or about May 2000 (SO₂ and CO Emissions Increases)

55. In or about May 2000, Respondent made a major modification to Unit 3 by replacing blowers with multistage centrifugal blowers and related equipment. The modification resulted in increased capacity of the unit.
56. This modification triggered "significant" net emissions increases in SO₂ and CO emissions as defined in 40 C.F.R. § 52.21(b)(23), and 30 TAC § 116.160(a), and is therefore considered a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(i).
57. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 3 at the Facility in 2000, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r) and 40 C.F.R. § 52.21(i)(1), and 30 TAC § 116.1(a).
58. In failing to apply BACT to the major modification made to Unit 3 at the Facility in 2000, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for a major modification, specifically those provided under 40 C.F.R. § 52.21(j)(3), and 30 TAC § 116.3(a)(3).
59. In reinitiating and continuing to operate the Facility in 2000, without obtaining or applying for the required permit to operate following completion of the major modification to Unit 3, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(3) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit 2 in or about September 2000 (SO₂ and CO Emissions Increases)

60. In or about September 2000, Respondent made a modification at Unit 2 by installing a combustor and related equipment on Dryer 3A to replace existing burners. The modification resulted in increased capacity of the unit.
61. This modification triggered "significant" net emissions increases in SO₂ and CO emissions as defined in 40 C.F.R. § 52.21(b)(23), and 30 TAC § 116.160(a), and is therefore considered a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(i).

62. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 2 at the Facility in 2000, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r) and 40 C.F.R. § 52.21(i)(1), and 30 TAC § 116.1(a).
63. In failing to apply BACT to the major modification made to Unit 2 at the Facility in or about September 2000, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for a major modification, specifically those provided under 40 C.F.R. § 52.21(j)(3) and 30 TAC § 116.3(a)(3).
64. In reinitiating and continuing to operate the Facility in or about September 2000, without obtaining or applying for the required permit to operate following completion of the major modification to Unit 2, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(4) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit 2 in or about September 2006 (NO_x and SO₂ Emissions Increase)

65. In or about September 2006, Respondent made a modification at Unit 2 by replacing and upgrading a dryer and related equipment. The modification resulted in increased capacity of the unit.
66. This modification triggered "significant" net emissions increases in NO_x and SO₂ emissions as defined in 40 C.F.R. § 52.21(b)(23), and 30 TAC § 116.160(a), and is therefore considered a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(i).
67. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 2 at the Facility in 2000, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r) and 40 C.F.R. § 52.21(i)(1), and 30 TAC § 116.110(a).
68. In failing to apply BACT to the major modification made to Unit 2 at the Facility in 2000, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for a major modification, specifically those provided under 40 C.F.R. § 52.21(j)(3), and 30 TAC § 116.111(1)(C).

69. In reinitiating and continuing to operate the Facility in 2000, without obtaining or applying for the required permit to operate following completion of the major modification to Unit 2, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(5) Failure to Obtain PSD Permit Prior to Making a Major Modification to Plant in or about September 2007 (NO_x and SO₂ Emissions Increase)

70. In or about September 2007, Respondent made a modification to the Facility by installing a process air header and related equipment. The modification resulted in increased capacity at the Facility.
71. This modification triggered "significant" net emissions increases in NO_x and SO₂ emissions as defined in 40 C.F.R. § 52.21(b)(23), and 30 TAC § 116.160(a), and is therefore considered a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(i).
72. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Plant at the Facility in 2007, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r) and 40 C.F.R. § 52.21(i)(1), and 30 TAC 116.110(a).
73. In failing to apply BACT to the major modification made to Plant at the Facility in 2007, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for a major modification, specifically those provided under 40 C.F.R. § 52.21(j)(3), and 30 TAC 116.111(1)(C).
74. In reinitiating and continuing to operate the Facility in 2007, without obtaining or applying for the required permit to operate following completion of the major modification to the Plant, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(6) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit 1 in or about April 2008 (NO_x and SO₂ Emissions Increase)

75. In or about the April 2008, Respondent made a major modification to Unit 1 by installing a new air preheater. The modification resulted in increased capacity at the Facility.

76. This modification triggered "significant" net emissions increases in NO_x and SO₂ emissions as defined in 40 C.F.R. § 52.21(b)(23), and 30 TAC § 116.160(a) and is therefore considered a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(i).
77. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 1 at the Facility in April 2008, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r) and 40 C.F.R. § 52.21(i)(1), and 30 TAC § 116.110(a).
78. In failing to apply BACT to the major modification made to Unit 1 at the Facility in April 2008, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for a major modification, specifically those provided under 40 C.F.R. § 52.21(j)(3), and 30 TAC § 116.111(1)(C).
79. In reinitiating, and continuing to operate, the Facility in April 2008, without obtaining or applying for the required permit to operate following completion of the major modification to the Plant, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(7) Failure to Include BACT in the Title V Permit

80. On March 31, 2003, Respondent obtained Federal Operating Permit Number O-01550. Revisions to Permit No. O-01550 were issued on December 5, 2005 and April 24, 2006. The Title V permit and December 5, 2005 and April 24, 2006 revisions thereto were deficient, as they did not include BACT requirements for projects that should have gone through PSD review for the following pollutants: CO and SO₂.
81. Further revisions to Permit No. O-01550 were issued on January 29, 2007. A renewal for Permit No. O-01550 was issued on March 24, 2008. The revised Title V permit and the renewal thereof were deficient, as they did not include BACT requirements for projects that should have gone through PSD review for the following pollutants: NO_x and SO₂.
82. Accordingly, the Title V permit issued on March 31, 2003, revised on December 5, 2005, April 24, 2006 and January 29, 2007, and renewed on March 24, 2008 did not include emissions limitations for NO_x, CO and SO₂ that assure compliance with the PSD requirements of the Act and the Texas SIP.

83. In failing to assure compliance with all applicable emission limitations, specifically those requiring that it incorporate BACT for NO_x, SO₂ and CO into its permit applications and subsequent permits, Respondent violated and continues to violate Section 502(a) and 504(a) of the Act, 42 U.S.C. Sections 7761a(a) and 7761c(a), as well as 40 C.F.R. Sections 70.5 and 70.6(a) (2009).

D. ENFORCEMENT

Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, inter alia, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Texas SIP. *See also* 40 C.F.R. § 52.23.

Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, inter alia, the requirements or prohibitions described in the preceding paragraph.

Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

E. OPPORTUNITY FOR CONFERENCE

SRCC may, upon request, confer with EPA. The conference will enable SRCC to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. SRCC has a right to be represented by counsel. A request for a conference or other inquiries concerning the Notice should be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

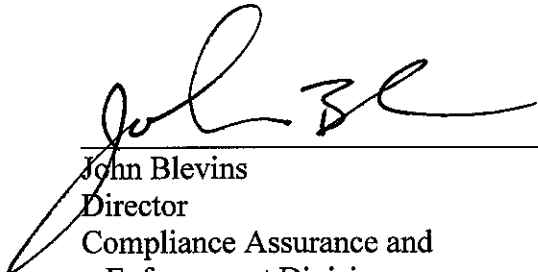
Lorraine Dixon (6RC-EA)
Assistant Regional Counsel
Air Enforcement Branch
Office of Regional Counsel, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

If you have any questions, please feel free to call Ms. Dixon at (214) 665-7589.

F. EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Dated: 1.11.13



John Blevins
Director
Compliance Assurance and
Enforcement Division